Group VI: Claims 21-23, drawn to a modified biological system/composition.

Group VII: Claims 24, 29 (partial), drawn to a method of use modified biological system/composition of Group VI.

Group VIII: Claims 26-27, drawn transgenic organisms comprising polynucleotide of Group IV.

Group IX: Claim 28, drawn to antibody against polypeptide of Group I.

Identification of one amino acid sequence of SEQ ID No: 1-10 and one corresponding nucleotide sequence of SEQ ID NO: 11-20 (if applicable) is also required.

Applicants elect, with traverse, Group I, Claims 1-7, for examination. As a single disclosed species, Applicants elect SEQ ID NO: 10, for examination purposes only.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - IX do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features. The Office has indicated that

> "this method is anticipated by Broekaert et al. (1993, WO9305153) or GenBank Accession No AF118222 (1999). Broekaert et al. teach an antimicrobial protein. Given the undefined "substantial homologous to SEQ ID NO: 1-10", the term encompasses any antimicrobial protein."

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

> "The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The

> determination is made on the contents of the claims as interpreted in light of the description and drawings (if any)."

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Moreover, the MPEP §806.03 states:

> "Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope definition."

Applicants respectfully submit that MPEP § 806.03 is applicable in this case.

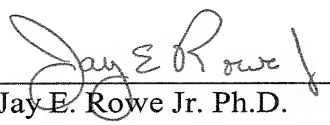
Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants submit that the above-identified application is now in condition for examination on the merits and early notice thereof is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Jay E. Rowe Jr. Ph.D.
Registration No. 58,948

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)